IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2784 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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U.K. JOSHI - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR GM JOSHI for Petitioner(s) : 1,
MS HANSA PUNANI, AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

Date : 22/06/2006
ORAL JUDGMENT

In this petition under Article 226 of the Constitution, the petitioner prayed for a writ of mandamus to direct the respondent authorities to appoint the petitioner to the post of Deputy

Executive Engineer alongwith six other persons who were appointed as Deputy Executive Engineers in the year 1972 and who were ultimately given deemed date of the year 1969. The petitioner also prayed for a further writ to direct the respondents to consider the petitioner's case for promotion to the post of Executive Engineer or Superintending Engineer on the basis that the petitioner be treated as appointed as Deputy Executive Engineer alongwith such six persons in the year 1972 and who were given deemed date in the cadre of Deputy Engineers of the year 1969.

2. The petitioner had applied in response to the GPSC advertisement for Class-I and Class-II in Gujarat Engineering Service. When the GPSC declared the results by notification dated 8.2.1968, 3 candidates were declared to have qualified for appointment to Class-I post of Executive Engineer, 10 candidates were declared to have qualified for appointment to Class-II post (Deputy Engineer), 2 candidates were declared to have been invited for viva-voce and personality test but who did not qualify for appointment to Class-I post, and 14 candidates were declared to have been invited for viva-voce and personality test, but who did not qualify for appointment either to Class-I or Class-II posts. Admittedly, the petitioner's name did not figure in List I or List II for candidates who had qualified for appointment to Class-I/Class-II post and the petitioner's name figured at Sr.No. 4 in List IV of candidates who did not qualify for appointment either to Class-I or Class-II posts. Thereafter the petitioner was appointed as a Junior Engineer

pursuant to the petitioner's selection which had nothing to do with the aforesaid examination for Class-I and Class-II posts conducted by the GPSC because the post of Junior Engineer was a Class-III post and, therefore, not within the purview of the GPSC. After the petitioner joined as Junior Engineer, on the basis of his experience and seniority in the cadre of Junior Engineers, the petitioner came to be promoted as Deputy Engineer in the year 1978 and ultimately the petitioner retired from service upon attaining the age of superannuation.

For the first time in the year 1992 the petitioner submitted representation dated 23.2.1992 contending that when the 10 successful candidates selected for Class-II post of Deputy Engineer were appointed, only 6 persons joined, but 4 persons did not join and, therefore, 4 posts of Deputy Engineer in Class-II service had remained vacant in the year 1972; thus 4 vacancies were required to be offered to persons in List IV who had obtained sufficiently high marks in the written test and viva-voce, but who were not included in the select list (List II). The petitioner, therefore, contended that the petitioner should have been treated as having been placed in the waiting list and when those 4 candidates selected for Class-II post of Deputy Engineer did not join in the year 1972, the petitioner ought to have been appointed as a directly recruited Deputy Engineer and on that basis the petitioner ought to have been given appropriate deemed date in the cadre of Deputy Engineers and the petitioner's case ought to have

been considered for promotion to the posts of Executive Engineer as well as Superintending Engineer. The petitioner's representation made on 23.2.1992 is produced at Annexure “D” to the petition. It was contended by the petitioner that the representation could be made only in the year 1992 because it was for the first time when the seniority list of Deputy Engineers was published in February, 1990 (Annexure “C”) that the petitioner came to learn that out of 10 successful candidates whose names were included in List II for Class-II post, only 6 persons had joined as Deputy Engineers and that as per the ratio for direct recruits and promotees, 4 more posts ought to have been filled in by further direct recruitment.

Since the petitioner did not get a reply to the said representation, the petitioner moved this Court by filing the present petition in April 1992.

3. The petition has been resisted by the affidavits in reply dated 10.7.1992 and 20.8.1992 filed by Mr KG Gohil, Under Secretary to the Government of Gujarat, Narmada & Water Resources Department. It has been pointed out in the said affidavits that there was no waiting list maintained at the relevant time and, therefore, the question of including the petitioner's name in the waiting list did not arise at all. The GPSC notification also bears out the case of the respondents that List IV wherein the petitioner's name was included was not shown as a waiting list, but was shown as the list of candidates who were not qualified for appointment

either to Class-I or Class-II posts.

4. Apart from the aforesaid aspect on merits of the matter, the petitioner is not entitled to claim any relief on merits under the discretionary writ jurisdiction of this Court because for the first time in the year 1992 the petitioner made the claim for direct appointment to the cadre of Deputy Engineers with effect from 1972/1969 and thus the representation came to be filed and the petition came to be filed after the delay of 20 years. The learned counsel for the petitioner would submit that it was only when the seniority list for the cadre of Deputy Executive Engineers was for the first time published in the year 1990 that the petitioner came to learn that only 6 Deputy Engineers had joined and that the other 4 successful candidates had not joined and, therefore, the representation was made to give deemed date of direct recruitment to the petitioner.

5. The explanation cannot be accepted. The petitioner was aware that as per the GPSC notification, the names of 10 successful candidates were included for Class-I post of Deputy Engineer. If at all the petitioner was interested in seeing that upon not joining of any of the 10 successful candidates, the cases of the other candidates in List IV ought to be considered, the petitioner ought to have made necessary inquiries at the relevant time and could not have remained indolent for a long period of 20 years. On this ground alone, the petition deserves to be dismissed.

6. The petition is accordingly dismissed. Rule is discharged.

[M.S. SHAH, J.]

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